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3688	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
	09/771,135	MESSER ET AL.
Office Action Summary	Examiner	Art Unit	
	KHANH H. LE	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>06/17/2010.</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>51-55,58 and 60-66</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>51-55,58 and 60-66</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This Office Action is responsive to the correspondence filed 06/17/2010.
Claims 51-55, 57-66 were pending. Applicant amended claims 51 and 52, and cancelled claims
57 and 59. Thus claims 51-55, 58, and 60-66 are now pending. Claim 51 (system), 61 (method),
64 (software on computer readable medium) are independent.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:
Whoever invents or discovers any new and useful process, machine, manufacture, or
composition of matter, or any new and useful improvement thereof, may obtain a patent
therefor, subject to the conditions and requirements of this title.

3.   **Claims *64-66* are rejected because the claimed inventions are directed to non-
statutory subject matter.**

Claim 64 recites:
64. Software embodied on **a computer readable medium and executable by a processor**,
wherein said software, when executed on a computer, causes said computer to perform steps
comprising:
…

**The specification is silent as to the possibility of the computer readable medium
being a transitory embodiment.**

**The specification typically recites "articles of manufacture". See e.g. claim 47
(published version)):** *"Articles-of-manufacture for use in a network-based e-commerce
environment which includes a merchant network of at least two network-connected e-commerce
merchants, said articles-of-manufacture comprising computer-readable media containing
instructions which, when executed, cause one or more network-connected computers to:…"*

Under the broadest reasonable interpretation "articles of manufacture" can be considered
signals. Applicant did not define "articles of manufacture".

The broadest reasonable interpretation of a claim drawn to a computer readable medium
typically covers forms of non-transitory tangible media and transitory propagating signals per se
in view of the ordinary and customary meaning of computer readable media, particularly when
the specification is silent. See MPEP 2111.01. When the broadest reasonable interpretation of a
claim covers a signal per se, the claim must be rejected under 35 U.S.C. 101 as covering non-
statutory subject matter. See In re Nuijten, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory
embodiments are not directed to statutory subject matter) and Interim Examination Instructions
for Evaluating Subject Matter Eligibility Under 35 U.S.C. 101, Aug. 24, 2009; p. 2. **See United**

**States Patent and Trademark Office (USPTO) Notice dated January 26, 2010,
http://www.uspto.gov/patents/law/notices/101_crm_20100127.pdf.**
 In this notice, the USPTO provided guidance for patent applicants who use claims directed to
computer readable media (also called machine readable media and similar variations). Such may
include non-statutory, transitory propagating signals.
The USPTO recognizes that applicants may have claims directed to computer readable media
that cover signals per se, which the USPTO must reject under 35 U.S.C. 101 as covering both
non-statutory subject matter and statutory subject matter.
**In an effort to assist the patent community in overcoming a rejection or potential rejection
under 35 U.S.C. 101 in this situation, the USPTO suggests the following approach: A claim
drawn to such a computer readable medium that covers both transitory and non-transitory
embodiments may be amended to narrow the claim to cover only statutory embodiments to
avoid a rejection under 35 U.S.C. 101 by adding the limitation "non-transitory" to the
claim.** Cf. Animals - Patentability, Off. Gaz. Pat. Office 24 (April 21, 1987) (suggesting that
applicants add the limitation "non-human" to a claim covering a multi-cellular organism to avoid
a rejection under 35 U.S.C. 101).

According to the notice, such an amendment would typically not raise the issue of new
matter, even when the specification is silent, because the broadest reasonable interpretation relies
on the ordinary and customary meaning that includes signals per se. (The limited situations in
which such an amendment could raise issues of new matter occur, for example, when the
specification does not support a non-transitory embodiment because a signal per se is the only
viable embodiment such that the amended claim is impermissibly broadened beyond the
supporting disclosure. See, e.g., Gentry Gallery, Inc. v. Berkline Corp., 134 F.3d 1473 (Fed. Cir.
1998)).

**Thus it is suggested that Applicant amends the claims to include "non-transitory"
before "computer readable medium" to overcome this rejection.**

**Claims 65-66, dependents of claim 64, are likewise rejected as suffering from the
same defects.**

Claim Rejections - 35 USC § 112 (second paragraph)

4.   The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and
distinctly claiming the subject matter which the applicant regards as his invention.

5.   **The previous rejection of claims 51-55, 57-58 under 35 U.S.C. 112, second paragraph, for mixing statutory classes is withdrawn.**

6.   **Claims 51-55, 58, 60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 51:
The claim scope is unclear:

1) It is unclear whether the claimed system is the combination of the CH server and the affiliates servers (first and second affiliate servers) and the merchant server or just the CH server. (Note that the previous set of claims recited the CH server, the affiliate and merchant servers as elements of the system. It appears that by this amendment Applicant has made the claim scope worse).

2) A lot of the limitations might not mean much since they are all recited with respect to the clearinghouse (CH) server. It is not clear what all these limitations mean to the structure of the CH server. That is it is not clear what structure in the server does it take to merely "parse" the http commands and what structure in the CH server is implied by all the subvariables? Is the parsing any different?

3) the 1st affiliate server is claimed merely as part of the intended use of the CH programmed FOR communicating with the 1st Affiliate server. Thus as a matter of claim interpretation, the wherein limitation as to the 1st affiliate server is not given patentable weight since the 1st server is outside the scope of the claim. **Thus all this means is that the CH is interpreted as merely configured to send and receive communications.** It is not clear what the details of the primary link and the http command mean to the CH's ability to communicate.

4) same issues with the 2nd affiliate server and the merchant server as with the 1st affiliate server.

5) Thus based on the above claim interpretation, the only part that has real meaning for the CH is the last part about assigning compensation by the CH based on items i-iii. Thus for prior art application the prior art only needs to meet this last part of the claim.

Claims 52-55, 58 are rejected as being dependent upon rejected base claim 51.

Claims 58, 60: should depend on 51 since 57 and 59 have been cancelled.

Appropriate correction is required for all above.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8.   Claims 51-55, 58, 60-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouthamel US 7249056 in view of in view of Landau et al., US 6804660 herein Landau, Official Notice #1 (with e.g. Pettersen US 6826594 or Crouthamel US 7249056 as support), and further in view of Official Notice #2.

Independent claims 51, 61, and 64 and claims 58 and 60:

Crouthamel discloses method and system for exchanging data between <u>affiliated</u> sites via a central hub. Fig 4 shows processing, tracking of referrals via central hub 18 (Herein "CH") between many affiliates and merchants. Col. 7 lines 18-35 shows commission based referral system. Fig. 6 shows user redirection from affiliate site to Merchant site via the central hub (affiliate directing to CH and CH redirecting to merchant). See e.g. Figure 6, steps 86, 88,98 and associated text. (col. 17 line 57 to col. 18 line 10: consumer clicks on a link on partner site that links to the CH which redirects to a merchant website; the link contains a link ID which corresponds to an url of another partner which can be a merchant webpage). The CH captures transaction data at the merchant website (Fig 6 step 98 and associated text). Crouthamel teaches, for compensation of referrers, tracking of consumer actions (click-throughs and purchases) via the CH (col. 15 l. 4-32; Figure 4 and associated text); identifying the referrals resulting in purchases by cookies or by other identifiers (col.19 lines 25-30). Crouthamel further teaches tracking of affiliations between affiliates and merchants sites can be done with other types of identifiers (col. 12 lines 25-40). CROUTHAMEL teaches Web servers typically employ the HyperText Transfer Protocol ("HTTP") to enable users to communicate over a number of hyperlinks that interconnect numerous web sites to each other (col. 1 lines 32-35) and its CH server is operable to use HTTP (e.g. col 12 l. 52). In Crouthamel, each merchant is linked to many partners which all go through the CH. So if Partner 1 refers to merchant M1, it has to go through the CH. So on for merchant 1 (or partner 2) to merchant 2.

Some relevant excerpts of Crouthamel:

(col. 4 line 64 to col. 5 line 12)

*Referring to the drawings, FIG. 1 is a block diagram illustrating a system
10 arranged to employ exemplary embodiments of the present invention. As shown
in FIG. 1, the system includes three partner sites 12, 14 and 16 (also referred
to as "**affiliate** sites"), three merchant sites 24, 26 and 28, and a
clearinghouse site 18, all of which are interconnected across one or more
computer networks 11, such as Wide Area Networks ("WANs"), the World Wide Web
("WWW"), and/or the Internet. However, the computer networks could also take
other forms, such as any communication network.* **Additionally, for simplicity,
only three partner sites, three merchant sites and one clearinghouse site are
illustrated in FIG. 1. However, people skilled in the art will appreciate that
more or fewer partner sites and merchant sites could also be used, and,
further, that more than one clearinghouse site could also be used.
Additionally, other arrangements and other elements, whether or not separately
known in the prior art, are contemplated and could also be used.**

(col.15 lines 14-32)
*As the consumer is linked to the **clearinghouse** site 18, the **clearinghouse**
site 18* **appends the consumer's query** *and possibly inserts a cookie on a
consumer's system. The cookie allows the **clearinghouse** site 18 to track the
consumer's actions, such as placing a purchase on a merchant site, and to also
track the affiliation between each partner site and the merchant site. When
the consumer orders data on the merchant sites 22 and/or 24, the order data is
sent from the merchant sites 22 and 24 to the **clearinghouse** site 18, as shown
at 64A and 64B in FIG. 4.* **Then, the clearinghouse site 18 may store the order
data on the storage unit 22. The clearinghouse site 18 may also track
transactions between the partner sites and the merchant sites, or track how
many consumers have clicked-through to the merchant sites from each partner
site. Additionally, the clearinghouse site 18 may determine commission
payments for each partner site based on the number of click-throughs to
affiliated merchant sites and/or the click-throughs that resulted in product
purchases on the merchant sites.**

(col. 20 line 65 to col. 21 line 6)
**When the clearinghouse site 18 receives the sets of transaction data from
the partner sites, as shown at 104A and 104B, the clearinghouse site 18
processes the received sets of transaction data and updates the internal tables
on the storage device 22. The internal tables, as previously mentioned, may
include product information data, transaction data, referral data and/or
tracking data. Using these tables, the clearinghouse site 18 may allocate a
credit/commission to each partner site based on the actual amount of
transaction.**

Thus CROUTHAMEL as discussed above disclose a system and a method for:
supporting web-based commerce and commission tracking at a clearinghouse server,
comprising:
in response to a user computer connecting to said clearinghouse server as a result of accessing a
first referral link in a web page of a first server, wherein said first referral link corresponds to a
referral from said first server to a second server (See e.g. Figure 6, steps 86, 88,98 and associated
text. (col. 17 line 57 to col. 18 line 10: consumer clicks on a link on partner site that links to the
CH which redirects to a merchant website; the link contains a link ID which corresponds to an
url of another partner which can be a merchant webpage):

redirecting said user computer (via the CH) to said second server (citations above), and
storing a record of said referral from said first server to said second server (citations above; e.g.
col. 20 line 65 to col. 21 line 6);
in response to said user computer connecting to said clearinghouse server as a result of accessing
a second referral link in a web page of said second server, wherein said second referral link
corresponds to a referral from said second server to a merchant server:
redirecting said user computer to said merchant server, and
storing a record of said referral from said second server to said merchant server (citations above
as applied to another set of referrer and merchant);

**Although CROUTHAMEL teaches commissions for referrals from a purchase
transaction (citations above), <u>Crouthamel does not explicitly disclose</u> successive referrals
and does not teach paying 2 parties or splitting fees for a single transaction. Thus
CROUTHAMEL does not disclose:**

"and
in response to an indication that said user computer completed an electronic purchase via a web
page of said merchant server, assigning compensation to said first server and to said second
server based on said record of said referral from said first server to said second server and said
record of said referral from said second server to said merchant server."

However CROUTHAMEL expansively discloses that each merchant has many partners
(col. 4 line 64 to col. 5 line 12) . Thus it would have been obvious at invention time that these
partners could be referral sources for each other and also form successive referrals. **Successive
referrals are taught by LANDAU which** discloses a network of affiliates providing a first link
on an affiliate site (e.g. fred.com) to reach a first e-site (a CD Merchant.com site), then the first
e-site providing a second link to reach a second e-site (e.g. MusicMemorabilia.com) (see at least
Fig. 7 and associated text; col. 15 lines 66 to col. 20 line 2: for example, referring to the
discussion in cols. 17-18).

Thus it would have been obvious to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA") to add Landau's teaching of successive referrals to CROUTHAMEL to allow forming successive referrals in CROUTHAMEL's system.

Further, Official Notice #1 is taken that it is old and well-known at the time of the invention that central accounting via a central hub is well-known for accounting convenience for the affiliates (see e.g. Pettersen US 6826594 , col. 2 lines 7-41). Also Crouthamel, e.g. col.19 lines 25-30; col. 15 lines 14-22). Thus it would have been obvious to a PHOSITA to adopt the referral model via central hub (taught by Crouthamel) in successive referrals for the above well - known accounting convenience (taught by e.g. Crouthamel or Pettersen).

As to the compensation scheme, Official Notice #2 is taken that it is well-known before invention time to split commissions between several parties participating in facilitating completion of a single service or transaction. For example in real estate purchases the commissions (usually a percentage of the sale price) are customarily split between the buyer's and seller's agents and/or brokers who facilitate the transaction. **Because** it is obvious to follow customary practices, thus it would have been obvious to follow this customary and well-known practice of splitting a referral or commission fee between the successive referrers who facilitate the purchase transaction in the system of Crouthamel in view of and Landau and Official Notice #1.

(Note that here, all the HTTP details in claim 51 are not given patentable weight to. As discussed in the above discussion under *35 USC § 112 (second paragraph:*
"3) the 1ˢᵗ affiliate server is claimed merely as part of the intended use of the CH programmed FOR communicating with the 1st Affiliate server. Thus as a matter of claim interpretation, the wherein limitation as to the 1ˢᵗ affiliate server is not given patentable weight. Thus all this means is that the CH is interpreted as merely configured to send and receive communications. It is not clear what the details of the primary link and this next http command mean to the CH's ability to communicate.

4) same issues with the 2nd affiliate server and the merchant server as with the 1ˢᵗ affiliate server.

5) Thus based on the above claim interpretation, the only part that has real meaning for the CH is the last part about assigning compensation by the CH based on items i-iii. Thus for prior art application the prior art only needs to meet this last part of the claim."

Thus for claim 51, the prior art only needs to disclose a CH merely **configured to send and receive communications (see Crouthamel) and to assign** *compensation based on items i-iii. Claim 51 as claimed does not even require disclosure of affiliate servers and merchant servers.*

Claims 52-53, 62-63, 65-66:

CROUTHAMEL, Landau and the Official Notices disclose a system as in claims 51, 61 and 64 above, and compensation of affiliates but does not disclose wherein compensation is assigned to the first affiliate website and the second affiliate website in equal shares.

or

wherein compensation assigned to the first affiliate website comprises a majority portion of a commission associated with said user's completion of the electronic transaction, and compensation assigned to the second affiliate website comprises a minority portion of a commission associated with said user's completion of the electronic transaction.

Official Notice is taken that it is well-known before invention time that compensation schemes are to be agreed between the parties as desired. They may be dictated by market forces. They may be dictated by pure greed, self-dealing and can be completely arbitrary and capricious, without (at least apparent) basis on performance. See e.g. "Fixing Executive Compensation Excesses: The board members who decide a CEO's pay have a fundamental conflict of interest, and shareholders need to have more of a say", by Edward E. Lawler III , BusinessWeek, Viewpoint February 5,2009,
        http://www.businessweek.com/print/managing/content/feb2009/ca2009025_072667.htm, downloaded 02/16/2009.

Note: "For the last 10 years more than 25% of board members have said it is generally too high, and 50% agree that it is too rich in some high-profile cases."

Thus the practice predates the instant invention. On the other hand, they may based on altruistic motives. See e.g. Excerpt of Hoyt, U.S. Provisional Application No. 60/178,260, filed January 25, 2000, on Public Pair (6 pages attached), page 1 of 6, 2nd to last para., disclosing referrals without commissions.

Because it is obvious to follow customary practices, thus in the system of CROUTHAMEL and Landau, setting compensation of the parties, as desired and agreed by the parties, with or without basis in performance or reason, (as shown in e.g. Lawler III and Hoyt), in any proportions, including in the proportions as claimed, would have been obvious to a PHOSITA. (It is noted the instant specification does not give any reason for the particular compensation split, see e.g. [0013] of the PgPub version, thus the particular compensation split could just have been arbitrary and is not critical to the invention).

Claims 54-55:

CROUTHAMEL and Landau disclose a system as in claim 51 above and CROUTHAMEL further discloses a database communicatively coupled to the clearinghouse server, the database operable to store data (see discussion of claim 51 above) .

The "data associated with the first affiliate website and the second affiliate website" and "data associated with compensation assigned to the first affiliate website and the second affiliate website" are non-functional descriptive material to which no patentable weight is given because the type of data does not impact the structure of the clearinghouse server. See MPEP 2106.

Since a database can store any type of data, it would have been obvious "data associated with the first affiliate website and the second affiliate website" and " data associated with compensation assigned to the first affiliate website and the second affiliate website could be stored if desired. Further CROUTHAMEL at least implicitly discloses the above data.

9.   Alternate Rejection of claims 51-56, 58 giving full weight to all the details of the HTTP:

Claims 51-55, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouthamel US 7249056 in view of in view of Landau et al., US 6804660 B2, herein Landau, Official Notice #1 (with e.g. Pettersen US 6826594 or Crouthamel US 7249056 as support), and further in view of Official Notice #2.

Claims 51 and 58:

Claims 51-55, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouthamel US 7249056 in view of in view of Landau et al., US 6804660 B2, herein Landau, Official Notice #1 (with e.g. Pettersen US 6826594 or Crouthamel US 7249056 as support), Official Notice #2 as discussed above in paragraph 8.

As to the details of the HTTP as claimed in 51:

As stated above, Crouthamel teaches first affiliate server (e.g. Fig 4 item 12), 2nd affiliate servers (Fig 4, any of the affiliate 12 or 14 or the merchant sites 22, 24 can be considered an affiliate server), and the merchant server (e.g. Fig 4, merchant sites 22, 24) and their websites with links (citations above). Crouthamel also teaches the clearinghouse server 18 communicating with all these servers.

CROUTHAMEL also teaches Web servers typically employ the HyperText Transfer Protocol ("HTTP") to enable users to communicate over a number of hyperlinks that interconnect numerous web sites to each other (col. 1 lines 32-35) and its CH server is operable to use HTTP (e.g. col 12 l. 52). CROUTHAMEL further teaches identifying the referral source

and the destination (e.g. merchant URL). (See e.g. Figure 6, steps 86, 88,98 and associated text.
(col. 17 line 57 to col. 18 line 10: consumer clicks on a link on partner site that links to the CH
which redirects to a merchant website; the link contains a link ID which corresponds to an url of
another partner which can be a merchant webpage).

Thus it is interpreted Crouthamel uses HTTP commands and the "affiliate field" (in the
HTTP commands) would be inherent in the referral messages received by the clearinghouse
server from the two referrers.

Claim 51 merely states that the incoming messages are parsed to determine the different
fields, such as the identity of the referrer and the action taken by the user at that website, e.g.
clicking on the link. Obviously, since the message to the clearinghouse is only generated when
a user clicks-through the link, the action would be "click-through". The same steps are taken
when the user interacts with the secondary referrer's website.

Crouthamel discusses tracking the users who click on the links, thus discloses "parsing"
the incoming messages to determine the information in the referrer fields and the type of action
taken by the user, e.g. click-through. CROUTHAMEL discloses HTTP thus it is interpreted
that CROUTHAMEL discloses
wherein said clearinghouse server is operable to receive communications from said first
affiliate server in the form of a HTTP command comprising an affiliate field (to id the 1st
affiliate) indicating a user's use of said primary referral link;

Similarly in the case of redirection request to the CH from a second affiliate to a
merchant site, CROUTHAMEL in view of Landau et al as discussed above, teach:

wherein said <u>clearinghouse server is operable to receive communications from said</u>
second affiliate server in the form of a HTTP command comprising an affiliate field indicating a
user's use of said secondary referral link;

In case of redirection from 1st server to 2nd server via the CROUTHAMEL 's CH,
CROUTHAMEL in view of Landau et al as discussed above inherently teach

<u>wherein said primary referral link comprises a first sub-link from said first affiliate server
to said clearinghouse server (e.g. indicating the path from 1st affiliate server to the CH) and a
second sub-link from said clearinghouse server to said second affiliate server (e.g. indicating the
path from the CH to 2nd affiliate server --since a LinkID in the referral link, to reach destination
server, is disclosed in </u>CROUTHAMEL (col. 17 line 57 to col. 18 line 10))

In case of redirection from 2nd server to merchant server via the CROUTHAMEL 's CH,
CROUTHAMEL in view of Landau et al as discussed above inherently teach:

<u>wherein said secondary referral link comprises a third sub-link from said second affiliate</u>

server to said clearinghouse server (e.g. indicating the path from 2nd affiliate server to the CH) and a fourth sub-link from said clearinghouse server to said merchant server(e.g. indicating the path from the CH to merchant server using a link ID as taught in CROUTHAMEL at col. 17 line 57 to col. 18 line 10).

As stated above, since Crouthamel teaches all transactions go through the central hub, thus it would have been obvious to a PHOSITA to have the successive transactions go through the central hub for central tracking and accounting convenience for the affiliates as taught in the Official Notice #1. Since the Crouthamel system supports HTTP protocol (for use with web servers, see e.g. Figure 1 and associated text), thus it would have been obvious to a PHOSITA to have the referrer and destination fields as claimed ,in the referral links, in the system of Crouthamel in view of Landau and the Official Notice, to allow tracking successive referrals for commissions accounting.

The additional limitations of 52-55, are rejected with the additional prior art as discussed above. See rejection of 52-56 above in paragraph 8. The motivation to combine are the same as discussed above.

10.   2nd Alternate Rejection of Claims 51-56, 58 giving full weight to all the details of the HTTP:

Claims 51-55, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouthamel US 7249056 in view of in view of Landau et al., US 6804660 B2, herein Landau, Official Notice #1 (with e.g. Pettersen US 6826594 or Crouthamel US 7249056 as support), Official Notice #2 and Official Notice #3 (with e.g. Kirsch US 5963915 or Pettersen US 6826594 as support).

Claims 51 and 58:

Claims 51-55, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouthamel US 7249056 in view of in view of Landau et al., US 6804660 B2, herein Landau, Official Notice #1 (with e.g. Pettersen US 6826594 or Crouthamel US 7249056 as support), Official Notice #2 as discussed above in paragraph 9 .

Alternatively, if there is any doubt that Crouthamel teaches the claimed HTTP details, Official Notice #3 is taken that at the time of the invention that redirection links containing both a sublink indicating the target server destination (second or fourth sublinks)

and another sublink indicating the source of the redirection request (1st and 3rd sublink) , for accounting purposes, are old.

See e.g. Kirsh (col. 6 line 35 to col. 7 line 19) disclosing a link at an affiliate site:
http://,direct server./redirect? <data>?http:://<redirect ..server>
where "The "direct.sub.-- server" portion of the <u>redirection</u> URL specifies the HTTP server target of a transaction…" and " The "data" term of the <u>redirection</u> URL provides data to the HTTPd server executed by the server system 16 to identify the source instance of the selected hyperlink".
  In Kirsh, e.g. "data" is considered part of the 1st and 3rd sublink, while http:://<redirect ..server can be considered the 2nd or 4th sublink.

    (Kirsch US 5963915 A discloses Secure, convenient and efficient system and method of performing trans-internet purchase transactions, central clearinghouse, URL redirection and cookie technologies).

    See also e.g. Pettersen US 6826594, col. 2 lines 7-41, disclosing links with embedded affiliate id's ; merchant URL's used for redirection to central hub.

    Since the Crouthamel system supports HTTP protocol (for use with web servers, see e.g. Figure 1 and associated text), thus it would have been obvious to a PHOSITA to have added the referrer and destination fields and links as well known (e.g. taught by Kirsh) in the referral links, in the system of Crouthamel in view of Landau and the Official Notice, to facilitate the needed redirections and tracking of successive referrals for commissions accounting .

    The additional limitations of 52-55, are rejected with the additional prior art as discussed above. See rejection of 52-56 above in paragraph 8. The motivation to combine are the same as discussed above.

                                    Response to Arguments

    11.   Applicant's arguments have been fully considered but they are persuasive as to Landau not teaching sharing of commissions and successive sublinks. However, the argument is moot as a new ground of rejection has been presented above.

    The Examiner notes however that Landau does show a http command link from fred.com to a CDMerchant.com merchant (col. 17 lines 30-32) showing destination websites and originating websites.

Conclusion

12.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ross US 6629135 discloses Affiliate commerce system and method.

13.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The Examiner works a part-time schedule and can normally be reached on Monday-Wednesday 9:00-6:00. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, John Weiss can be reached on (571)272-6812. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314). Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Khanh H. Le/
Primary Examiner, Art Unit 3688